

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulation
Department of Health and Mental Hygiene
(DLS Control No. 15-297)**

Overview and Legal and Fiscal Impact

The regulation requires, as a condition of participation in the Medicaid program, a provider of Medicaid services to allow the Department of Health and Mental Hygiene or its agents to require all providers to consent to criminal background checks, including fingerprinting.

The regulation presents no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulation of COMAR Affected

Department of Health and Mental Hygiene:

Medical Care Programs: General Medical Assistance Provider Participation Criteria:
COMAR 10.09.36.03

Legal Analysis

Background

Section 6401 of the Affordable Care Act requires the U.S. Secretary of Health and Human Services to establish procedures for screening providers and suppliers under Medicare, Medicaid, and the Children's Health Insurance Program. This section also requires states to comply with the procedures established for screening providers and suppliers. Under federal regulations adopted to implement these requirements, a state Medicaid agency must establish categorical risk levels for providers and provider categories who pose an increased financial risk of fraud, waste, or abuse to the Medicaid program. When the agency determines that a provider's categorical risk level is "high," or when the agency is otherwise required to do so under State law, the agency must require providers to consent to criminal background checks, including fingerprinting.

Guidance from the Centers for Medicare and Medicaid Services issued in June 2015 confirmed that Fingerprint-Based Criminal Background Checks (FCBC) are required for high-risk providers under the enhanced screening and enrollment provisions of federal law. States must complete implementation of the FCBC requirement by June 2016. Under federal regulations, Medicare considers newly-enrolling home health agencies and suppliers of durable medical equipment, prosthetics, orthotics, and supplies to be "high" categorical risk.

Summary of Regulation

The regulation modifies conditions of participation in the Medicaid program for providers of Medicaid services. Under existing regulations, a “provider” is defined as an individual, association, partnership, corporation, unincorporated group, or any other person authorized, licensed, or certified to provide services for Medicaid program recipients and who, through appropriate agreement with the Department, has been identified as a Medicaid program provider by the issuance of an individual account number. The regulation requires a provider, as a condition of participation, to allow the Department or its agents to require all providers to consent to criminal background checks, including fingerprinting.

Legal Issues

The regulation presents no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites §§ 2-104(b), 15-103, and 15-105 of the Health – General Article as statutory authority for the regulation. Section 2-104(b) authorizes the Secretary of Health and Mental Hygiene to adopt regulations to carry out provisions of law that are within the Secretary’s jurisdiction. Section 15-103 establishes the Maryland Medical Assistance Program and requires the Secretary to administer the program. Section 15-105 requires the department to adopt regulations for reimbursement of providers under the Medicaid program.

This authority is correct and complete. The regulation complies with the legislative intent of the law.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The regulation requires a provider, as a condition of participation in Medicaid, to allow the department or its agents to require all providers to consent to criminal background checks, including fingerprinting. This regulation is required by federal law (§ 6401 of the Patient Protection and Affordable Care Act). The department advises that the regulation has an indeterminate impact on State or local governments. The Department of Legislative Services disagrees and notes that, as the majority of providers are assumed to have already consented to criminal background checks as a condition of participation in Medicare and the cost of any such checks or fingerprinting must be incurred by the provider, any fiscal impact on the State or local agencies is minimal.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulation has a minimal economic impact on small businesses in the State, as a majority of Medicaid providers have already completed fingerprint-based criminal background checks as a condition of participation in Medicare. The Department of Legislative Services concurs.

Contact Information

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